National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 273-1991

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Press Release (R-2657): Shanti Ananthanayagam is Named NLRB's Budget Officer

Area Trade Bindery Co. (31-CA-26970, 27500; 352 NLRB No. 29) Burbank, CA Feb. 29, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain to impasse before making unilateral changes to employees' terms and conditions of employment. In doing so, the Board considered the factors weighed by the judge and identified in *Taft Broadcasting Co*., 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968). In addition, the Board modified the judge's remedy to include traditional make-whole language for any loss of wages or benefits resulting from the Respondent's unlawful unilateral implementation of its final offer. [HTML] [PDF]

(Members Liebman and Schaumber participated.)

Charges filed by Graphic Communications Local 404; complaint alleged violations of Section 8(a)(5) and (1). Hearing at Los Angeles, March 6-8, 2006. Adm. Law Judge Jay R. Pollack issued his decision May 16, 2006.

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Butler Asphalt, L.L.C. (9-RC-18130; 352 NLRB No. 32) Vandalia, OH, Feb. 29, 2008. The Board adopted the hearing officer's recommendation to overrule the challenge to the ballot of Ricki Tucker, using a different rationale. The Board analyzed Tucker's status under *Caesar's Tahoe*, 337 NLRB 1096 (2002). Applying the third prong of the *Caesar's Tahoe* test, the Board concluded that Tucker shares a sufficient community of interest with unit employees to warrant inclusion in the unit. [HTML] [PDF]

The Board reversed the hearing officer to sustain challenges to the ballots of Mike Craft, Bert Gogan, Jr., and Raymond Lawson, finding that the stipulated election agreement unambiguously excludes them. The Board also reversed the hearing officer to overrule challenges to the ballots of Travis Robinson and Mark Evans, finding that the parties' stipulation unambiguously includes them.

The Board clarified its holding in *Viacom Cablevision, 268* NLRB 633 (1984), that the Board will only consider job classifications that "fairly represent" the work employees perform. The Board noted that *Viacom* is applicable to situations in which an employer has attempted to "gerrymander" job classifications after a stipulation has been entered into, and was not intended to apply to situations where such gerrymandering has not taken place.

(Members Liebman and Schaumber participated.)

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Jackson Hospital Corp., d/b/a Kentucky River Medical Center (9-CA-37734, et al.; 352 NLRB No. 33) Jackson, KY Feb. 29, 2008. The Board adopted the administrative law judge's backpay awards to four discriminatees. Applying precedent, the Board rejected the Respondent's contention that income received by one of the discriminatees from a side trucking business she owned should be treated as interim earnings to reduce backpay, since neither that income nor her activity with the business had increased from before her unlawful discharge. [HTML] [PDF]

(Members Liebman and Schaumber participated.)

Hearing at Jackson on various dates between Oct. 18 and Nov. 28, 2006. Adm. Law Judge Margaret G. Brakebusch issued her supplemental decision Feb. 22, 2007.

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Laurel Baye Healthcare of Lake Lanier, LLC (10-CA-35958, 35983; 352 NLRB No. 30) Buford, GA Feb. 29, 2008. The Board adopted the findings of the administrative law judge that the Respondent violated Section 8(a)(5) and (1) of the Act by changing its employee dress code, attendance policy, and vacation, sick-leave pay, and health insurance benefits, without first notifying the Union and affording it an opportunity to bargain about these changes. [HTML] [PDF]

The Board found the Respondent's defenses meritless in that it did not act unlawfully because the changes were de minimis; never implemented; implemented on a corporate-wide basis; based on exigent circumstances; or the result of a mistake.

The Board also found that the Respondent had waived its argument that it had no duty to bargain over changes to its health insurance policy under *Courier-Journal*, 342 NLRB 1093 (2004), because it had failed to raise this argument before the judge.

(Members Liebman and Schaumber participated.)

Charges filed by Food and Commercial Workers Local 1996; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Buford on March 9, 2006. Adm. Law Judge Lawrence W. Cullen issued his decision July 12, 2006.

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The McBurney Corp. (26-CA-17564, et al.; 352 NLRB No. 35) Norcross, GA Feb. 29, 2008. The Board denied the motions for reconsideration filed by the Charging Party and the General Counsel. [HTML] [PDF]

In its previous decision in *The McBurney Corp.,* 351 NLRB No. 49 (2007), the Board found that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily refusing to hire certain union-affiliated applicants. The Board ordered the Respondent to provide instatement and backpay to the discriminatees. The Board specified that the awards to union salts James Bragan and Dale Branscum would be subject to the remedial limitations established in *Oil Capitol,* 349 NLRB No. 118 (2007). Further, the Board said that the Respondent would be permitted to show in compliance that additional discriminatees were salts.

In their motions for reconsideration, both parties argued that *Oil Capitol* should not be applied at the compliance stage of this case. The Board found that neither motion presented "extraordinary circumstances" warranting reconsideration. In particular, the Board found no merit to their argument that *Oil Capitol* should not be applied retroactively. The Board noted that it had stated in *Oil Capitol* that it would apply the new evidentiary requirement in the compliance proceeding of *Oil Capitol* and in all cases where the discriminatee is a union salt. The Board cited

other cases where it had similarly applied *Oil Capitol* to compliance where those cases had initiated before *Oil Capitol* issued. Moreover, the Board stated that *Oil Capitol* addressed matters presented in compliance proceedings and that there has not yet been a compliance proceeding in *McBurney*. Thus, the Board reasoned, applying *Oil Capitol* does not require re-litigation.

(Members Liebman and Schaumber participated.)

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North American Linen, LLC (22-CA-27783; 352 NLRB No. 26) Long Branch, NJ, Feb. 25, 2008. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to reduce to writing the collective-bargaining agreement it negotiated and entered into with the Union, by failing and refusing to implement the terms of the collective-bargaining agreement, and by withdrawing recognition from the Union. The Board also adopted the judge's recommended Order, including his recommendation that the Respondent be ordered to make all contractually required payments to the Union's health benefit and pension funds. [HTML] [PDF]

(Members Liebman and Schaumber participated.)

Charge filed by United Workers of America Local 621; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark on July 18, 2007. Adm. Law Judge Lawrence W. Cullen issued his decision Oct. 29, 2007.

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San Luis Trucking, Inc., and its alter ego Servicios Especializados Del Colorado, S.A. De C.V., and Factor Sales, Inc., all a Single Employer and/or Joint Employers (28-CA-20387, et al.; 352 NLRB No. 34) San Luis, AZ Feb. 29, 2008. The Board affirmed the administrative law judge's finding that Factor Sales (FS) and San Luis Trucking (SLT) are single employers and that San Luis Trucking and Servicios Especialzados del Colorado, a Mexican-based subsidiary of Factor Sales, are single employers. It also affirmed that the Respondent, collectively FS and SLT, violated (1) Section 8(a)(1) of the Act by interrogating employee Quezada and by instituting a work rule prohibiting drivers from talking to mechanics except when employee Vega was present; (2) Section 8(a)(5) by instituting a new work rule regarding discussions among drivers and mechanics without bargaining with the Union; more strictly enforcing disciplinary and attendance rules without bargaining with the Union; subcontracting the transportation business of SLT without bargaining with the Union; unilaterally closing SLT without bargaining with the Union; and failing and refusing to provide the Union with information requested in its Dec, 22, 2005 letter; and (3) Section 8(a)(3) by more strictly enforcing work rules in response to Union activities; subcontracting the transportation business of SLT because of Union activities; constructively discharging employees Sandoval, Gonzalez, and Quezada because of their Union activities; and closing SLT to influence Factor Sales employees' Union activities. [HTML] [PDF]

In addition, the Board found it unnecessary to pass on the judge's finding that the Respondent violated Section 8(a)(5) by unilaterally changing the terms and conditions of employment of employees Sandoval, Gonzalez, and Quezada.

Factor Sales has owned and operated grocery stores in the Yuma, AZ area for approximately 20 years. At the time of the hearing, FS operated nine stores and employed approximately 500 employees. Victor Salcido is the principal stockholder. SLT, a wholly owned subsidiary of FS, was established by Victor Salcido in 1993 for the purpose of transporting groceries from wholesalers to Factor Sales and other stores.

The Union won a representation election and was certified as the exclusive bargaining representative for SLT employees on Feb. 11, 2005. Following the Union's certification, representatives from the Union, SLT, and FS met for a total of three bargaining sessions in March, April, and May 2005. At the April meeting, SLT's attorney and representative, Barry Olsen, stated that SLT was in poor financial condition. At the third (and last) meeting on May 26, Olsen repeated that SLT was in financial trouble.

In July 2005, Salcido unilaterally decided to transfer approximately 60% of SLT's trucking business from SLT to another company, Unified Western Grocers. The Respondent alleged that SLT continued to lose money, and on Feb. 6, 2006, the Respondent closed SLT.

The principle issue in the case was whether the Respondent's decision to transfer a majority of bargaining unit work from SLT to Unified, and its subsequent decision to close SLT, was mandatory subjects of bargaining. The judge found, and the Board agreed, that under *Fibreboard Paper Products v. NLRB*, 379 U.S. 203 (1964), the Respondent violated Section 8(a)(5) by unilaterally transferring work to Unified. In addition, the judge found, and the Board agreed, that the Respondent's subsequent decision to close SLT was not a change in the scope and direction of the business. Nor was the decision privileged as a "partial closure" under *First National Maintenance,* 452 U.S. 666 (1981). Moreover, the judge rejected the Respondent's contention that it was forced to take these actions because of SLT's dire financial losses because the Respondent failed to produce sufficient evidence of its financial condition despite the General Counsel's subpoenas for the financial information at issue.

(Members Liebman and Schaumber participated.)

Charges filed by Food and Commercial Workers Local 99; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at San Luis and Somerton, Nov. 7-9, Dec. 5-8, 2006, and Jan. 9-10, 2007. Adm. Law Judge Joseph Gontram issued his decision May 8, 2007.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

United States Postal Service (Postal Workers Phoenix Metro Area Local) Phoenix, AZ Feb. 27, 2008. 28-CA-21451; JD(SF)-08-08, Judge Gregory Z. Meyerson.

Jackson Hospital Corp. d/b/a Kentucky River Medical Center (Steelworkers and an Individual) Jackson, KY Feb. 26, 2008. 9-CA-37734, et al.; JD-12-08, Judge Michael A. Rosas.

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NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Mega Force Productions Corp. (an Individual) (13-CA-44252; 352 NLRB No. 27) Chicago, IL Feb. 28, 2008. [HTML] [PDF]

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WITHDRAWAL OF ANSWER

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's withdrawal of its answer and amended answer to the complaint and compliance specification.)

Shane Steel Processing, Inc., and J&J Land LLC, a single employer (Auto Workers Local 771) (7-CA-50288; 352 NLRB No. 28) Fraser, MI Feb. 29, 2008. [HTML] [PDF]

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NO ANSWER TO AMENDED COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for partial summary judgment in part based on the Respondents' failure to file an answer to the amended compliance specification.)

Paint America Services, Inc., SRS Group, Inc., Paint America, Paint America, Inc., and Paint America of Michigan, Inc. (Painters District Council 22) (7-CA-47564; 352 NLRB No. 31) Detroit, MI Feb. 29, 2008. [HTML] [PDF]

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LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Palm Beach Metro Transportation, LLC, West Palm Beach, FL, 12-CA-9265, Feb. 29, 2008 (Members Liebman and Schaumber)
Sidhal Industries, LLC, Hempstead, NY, 29-RC-11479, Feb. 29, 2008 (Members Liebman and Schaumber)
St. Mary Medical Center, Riverside, CA, 31-RC-8650, Feb. 29, 2008 (Members Liebman and Schaumber)

DECISION AND DIRECTION OF SECOND ELECTION

Good Samaritan Hospital, Los Angeles, CA, 31-RD-1555, Feb. 29, 2008 (Members Liebman and Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Stanley Associates, Inc., St. Albans, VT, 1-RC-22171, Feb. 26, 2008 (Members Liebman and Schaumber) [amending decision to permit certain employees to vote under challenge]
Aerotek, Inc., Elk Grove, CA, 20-RC-18169, Feb. 28, 2008 (Members Liebman and Schaumber)

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